

Attachment D_AOC Item 71_Construction Sites Program Update

AOC # 71 says: “The update will include: (1) an escalation process to address chronic noncompliance by contractors, and (2) a mechanism to track chronic noncompliance by contractors.”

Actions:

1. CDOT convened an MS4 Construction Program Task Force (Task Force) comprised of two staff from each Region, at least one of whom was an RWPCM, and the MS4 Construction Program Manager. CDOT's Chief Engineer/Director of Stormwater Compliance empowered the Task Force to redefine the MS4 Construction Program to consistently and uniformly achieve MS4 Permit requirements and resolve findings from the spring 2015 EPA MS4 Permit audit.
2. The Task Force met two days per month from August 2016 through February 2017 to develop standard operating procedures (SOPs) to uniformly achieve Construction Sites Program requirements in the MS4 Permit and resolve Findings from the USEPA MS4 Permit CEI in spring 2015.
3. CDOT published the Task Force-developed SOPs in the *CDOT MS4 Construction Program Manual (Manual)*. The *Manual* was published to the CDOT Water Quality Program website on March 1, 2017 (<https://www.codot.gov/programs/environmental/water-quality/ms4-construction-program-manual-version-1.1>). The *Manual*, which CDOT believes to be the first of its kind in the United States for DOTs, is a ready reference for MS4 Construction Program compliance during project design, construction, close-out and Department-wide oversight monitoring.
4. Significant changes to CDOT's MS4 Construction Program, as directed by the *Manual*, include:
 - a. A required SWMP Preparer Certification for CDOT staff and contractors.
 - b. A required SWMP Reviewer Certification for CDOT staff.
 - c. Recommended revisions to *CDOT Standard Specifications for Road and Bridge Design*, Subsection 208.09, Failure to Perform Erosion Control. 208.09 is CDOT's regulatory authority for the MS4 Construction Program. The revised 208.09 will include escalation processes for severe and chronic violations, and recalcitrant violators and will elevate financial disincentives for MS4 Construction Program non-compliance to a level comparable with other DOTs in the region.
 - d. Internal monitoring by Headquarters staff of MS4 Construction Program requirements with an escalation process that escalates to the Director of Stormwater Compliance.
 - e. Third party audits of CDOT's MS4 Construction Program at least twice per MS4 Permit term.
5. CDOT staff that have roles within the *Manual* are implementing the procedures. Note that the MS4 Construction Manager is not authorized to unilaterally implement all changes to the MS4 Construction Program – particularly those that directly affect CDOT engineering sections. For example, proposed revisions to 208.09, CDOT's Regulatory Mechanism, must be reviewed by and presented to CDOT's Standards and Specifications Unit (SSU), CDOT's Project Development Advisory Committee (PDAC),

CDOT's Water Quality Advisory Committee (WQAC) and the joint CCA/CDOT Specification Committee.

6. To address the AOC item (1) an escalation process to address chronic noncompliance by contractors: To date, suggested revisions to *CDOT Standard Specifications for Road and Bridge Design*, Subsection 208.09, Failure to Perform Erosion Control, have been reviewed by the SSU and PDAC (mentioned above in #5). The WQAC (also in #5) just met on January 23, 2018 but had not met for a year before that. They were notified of the 208.09 changes as required by CDOT's MS4 Construction Manual. The revised 208.09 includes an escalation process to address chronic noncompliance, recalcitrant violators and severe findings. The new regulatory mechanism specification 208.09 is on the agenda for the next Specification Committee meeting in March 2018. Note that the revised 208.09 modifies the corrective action period from 48 hours to 7 calendar days, recognizing that the CDPS-SCP still requires violations be "implemented as soon as possible, immediately in most cases". The shift to a 7-day corrective action period is accompanied by a significant increase in disincentives and these disincentives are applied per individual finding, as opposed to one disincentive for all findings from one MS4 Construction Program routine audit. The shift to a 7 day corrective action period will modify the metric CDOT uses to report progress on AOC Item No. 70.
7. To address the AOC item (2) a mechanism to track chronic noncompliance by contractors: CDOT is fast-tracking completion of ESCAN 2.0 which is the Department's internal software package used to track the MS4 Construction Program. Notable components being tracked are:
 - MS4 routine audit
 - Audit findings
 - CDOT's regulatory mechanism
 - Specification changes
 - SWMP preparation
 - Review and approval
 - Training components
 - Internal oversight and monitoring of the MS4 Construction Program
 - Administrative functions

CDOT is programming ESCAN 2.0 to track internal noncompliance within the MS4 Construction Program and flag instances of noncompliance to be investigated by the MS4 Construction Program Manager with escalation of noncompliance if needed.

Next Steps: After 208.09 is approved and implemented and ESCAN is updated, HQ will track its effectiveness and report to Executive Management on a quarterly basis.